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10/771,969	02/04/2004	Ligia A. Rivera	659/2240	3833

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EXAMINER

THOMAS, ALEXANDER S

ART UNIT	PAPER NUMBER
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1772

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/771,969
Filing Date: February 04, 2004
Appellant(s): RIVERA ET AL.

Peter Brunovskis
For Appellant

EXAMINER'S ANSWER

MAILED
APR 03 2006
GROUP 1700

This is in response to the appeal brief filed March 16, 2006 appealing from the Office action mailed August 25, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,623,834

NISSING et al

9-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 81-87, 111-114, 119 and 120 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' acknowledged state of the art in view of Gordon et al. The primary reference discloses the invention substantially as claimed, namely a roll of wet wipes comprising perforated sheets; see page 1, lines 24-28 of the instant specification. Gordon et al discloses the desirability of the use of a sodium chloride containing composition on wet wipes; see Example III and column 4, lines 3-9. It would have been obvious to one of ordinary skill in the art to use the antibacterial composition of the secondary reference on the article of the primary reference to provide a wet wipe with enhanced cleaning properties. Regarding the size of the roll, it would have been obvious to one of ordinary skill in the art to adjust the size of the wet wipes to accommodate a particular end use of the wet wipe.

Claims 90-98, 115-118, 121 and 122 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' acknowledged state of the art in view of Gordon et al as applied to claims 81-87, 111-114, 119 and 120 above, and further in view of Nissing et al. The primary reference in view of Gordon et al suggests a roll of wet wipe comprising a wetting composition containing inorganic salt. However this combination of references does not suggest having grooves on the roll of wet wipes. Nissing et al disclose the desirability of providing transverse grooves in wet wipe material to aid in cleaning surfaces; see column 1, lines 21-33 and Figure 5b. It would have been

obvious to one of ordinary skill in the art to provide transverse grooves in the wet wipe of the primary reference in order to increase its ability to clean surfaces.

Claims 81-87, 111-114, 119 and 120 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 41 of copending Application No. 10/664,342. The application discloses a roll of wet wipes comprising sodium chloride. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to adjust the amount of salt in the solution in order to provide the desired cleaning properties for a particular end use.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 90-98, 115-118, 121 and 122 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 41 of copending Application No. 10/664,342 in view of Nissing et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because Nissing et al disclose the desirability of providing transverse grooves in wet wipe material to aid in cleaning surfaces; see column 1, lines 21-33 and Figure 5b. It would have been obvious to one of ordinary skill in the art to provide transverse grooves in the wet wipe of the primary reference in order to increase its ability to clean surfaces.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(10) Response to Argument

Applicants argue that Gordon does not disclose wet wipes and teaches away from using wet wipes because Gordon discloses a wipe wherein the coating composition thereon only becomes wet when shear force is applied (when the wipe is used). Applicants further argue that Gordon fails to provide any motivation for applying Gordon's emulsion to the wet wipe of the primary reference. These arguments are not convincing of patentability. The term "wet wipe", by applicants' own admission, is meant to include both wipes that contain a wet composition before use and wipes that become wet during use; see page 2, lines 3-5 of the instant specification. Furthermore, the instant claims do not require that the wet wipe be wet before or after use of the wipe. The motivation to use the wetting solution of Gordon on the wipe of the primary reference is found at column 4, lines 3-22 of Gordon wherein it disclosed that the wetting solution provides effective cleaning properties. Therefore, it would have been obvious to one of ordinary skill in the art to apply to the wetting solution of Gordon to the roll of wet wipes in the primary reference as an improvement over the wetting composition used in the primary reference in order to provide a wet wipe that has effective cleaning properties. Applicants also argue that there is no suggestion to form the prior art roll with the instantly claimed width and diameter. Clearly, it would have been obvious to one of ordinary skill in the art to vary the size of the wipes, i.e. the roll of wipes, depending on the intended use of the wipes. Furthermore, a change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 UPQ 237 (CCPA 1955). Applicants also argue that the examiner's reliance on

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applicants' statements in the "Background of the Invention" portion of the instant specification is inappropriate. The statements in the instant specification relied upon by the examiner are in the paragraph bridging pages 1 and 2. This portion of the specification is believed to clearly disclose information that was known in the art prior to applicants' invention, in view of the phrases "have been traditionally" and "have been used".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

Harold Pyon 

Carol Chaney 



ALEXANDER S. THOMAS
PRIMARY EXAMINER